

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHNATHAN CONRAD FULLER,

Plaintiff,

No. CIV S-04-1276 FCD EFB P

vs.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner prosecuting this civil rights action without counsel. *See* 42 U.S.C. § 1983. Pursuant to the November 2, 2006, schedule, trial is set for October 30, 2007. Defendants, through counsel, request the court to continue the trial date under the authority of Rule 6 of the Federal Rules of Civil Procedure. For the reasons stated below, the request is granted.

Rule 6 has no application to the trial date set in a pretrial scheduling order. Instead, Rule 16(b), which provides that schedule may be modified upon a showing of good cause, applies. Fed. R. Civ. P. 16(b). Good cause exists when the moving party demonstrates he or she cannot meet the deadline despite exercising due diligence. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). Defendants' counsel notes that he has trials set for October 30, 2007, and November 27, 2007, in cases pending in this court. He asserts that the November 27,

1 2007, trial is very complex in that it involves many parties and complex legal issues. Counsel  
2 argues that this conflict justifies continuing the trial date in this matter.

3 Given counsel's scheduling conflict with other previously scheduled trial dates, good  
4 cause exists for continuing the trial date in this case.

5 Accordingly, it is hereby ORDERED that the trial date set for October 30, 2007, is  
6 vacated. The parties shall comply with the dates previously set for completion of discovery and  
7 law and motion. The court will schedule, if necessary, a final pretrial conference and a new trial  
8 date upon resolution of any dispositive motions.

9 Dated: March 6, 2007.

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12 EDMUND F. BRENNAN  
13 UNITED STATES MAGISTRATE JUDGE  
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